

**RE: Comments on Staff Report and SMP Items**

This week's staff report recommends various features of setbacks to be regulated in the SMP. These include the depth of setback, area of coverage, and methods to achieve a reduction in SMP requirements.

**Inappropriate / Missing Science**

Setbacks are an integral part of the transition from the aquatic zone to the uplands. This area is now being termed the riparian area (though the term originally referred only to stream and river banks). Like shoreline stabilization, the City's regulations need to be based on factual, applicable information, not conjecture and hypothecation. Yet this week's staff report cites inappropriate technical references. For example, Table 2: "Key Functions Protected by Vegetated Setbacks" provides information based on two references; one by C.W. May, the other a report from the State of Vermont.

It should be noted that May's report is focused on Stream Riparian science, and is not specific to lakes. May provides the following definition – "*riparian*" is derived from the Latin word "*riparius*" meaning "of or belonging to the bank of a river" (Naiman and Decamps 1997). May's treatise encompasses nearly 80 pages but mentions the word "lake" only 6 times; none in reference to any of Puget Sound's lakes

The Vermont reference can be viewed at – [Vermont Report Link](#)

Of importance to the Commission's task, it should be noted that there are no specific studies or references provided for the Vermont recommendations.

**Vermont Report's Lake Conditions**



Is this what staff recommends Bellevue shores look like?

## Shoreline Ecological Functions – A Moving Target

As reported in the Shoreline Analysis Report (SAR), there are four functions the Dept. of Ecology lists for defining ecological functions. They include Habitat, Vegetative, Hydrologic, and Hyporheic. Stepping over the fact that the Hyporheic function is stream specific, Ecology listed some 15 sub-functions. The SAR purports that these were used to evaluate some 3 dozen shoreline reaches (or sections) of Bellevue's lake shores. Your staff report this week lists a decidedly different, larger set of sub-functions, including:

Fish Habitat	Invertebrate Habitat
Mammal and Bird Habitat	Amphibian and Invertebrate Habitat
Food Chain Support, Structure & Diversity	Large Woody Debris
Wave Attenuation	Sediment Removal and Bank Stabilization
Bio-Diversity	Temperature Regulation
Water Storage & Flood Control	Collect Woody Debris & Organic Transport
Water Quality Improvement	Shoreline Anchoring and Wave Attenuation
Ground Water Recharge/Discharge	Sediment Storage & Collection
Chemical Cycling	Vegetation Support (Moisture)
Nutrient & Toxic Compound Removal	

As I've pointed out in previous meetings, there is an unacceptable redundancy among these elements, but more serious now is the freedom with which these elements have been altered, redefining what factors are included in "Ecological Function". Logically, one would ask, "Don't we need to re-evaluate the sections (reaches) of our shoreline studied as part of the SAR, if the sub-functions have changed"? **"No Net Loss" cannot be treated in an arbitrary fashion.**

The bank of new sub-functions staff has depicted in this week's report essentially sends a message that, if we're to satisfy the ecological needs, shorelines are no place for humans. **Please do not lose sight of the fact that humans do live there.**

### Menu of Options

The staff report lists, under Appendix 6, options for reducing setback requirements. There are only 3 objectives they list attainable:

- Link upland and aquatic resources
- Provide space for wildlife
- Pollutant removal and improved water quality

Even these must be questioned.

The feasibility and benefits of **linking upland and aquatic resources** in an urban setting such as Bellevue's has not been established using locally applicable science that accounts for conditions mentioned above and pointed out by WSSA over the last year.

The **provision of space for wildlife** must be founded a clearly defined set of goals and objectives for doing so. Only four ecological functions are listed without regard to other consequences, such as public

safety and the differing needs of urban versus rural environments. Our shorelines are not areas with one house on 3 or 5 acres. We're at 2 to 3 dwellings per acre. At, and above, such densities, preserves and zoos are used to provide sensible human-wildlife interaction. Proceeding otherwise is imprudent.

Finally, ***pollutant removal and improved water quality*** have been a primary WSSA focus since the outset of the update process<sup>1</sup>. As acknowledged within cited SMP references, typical urban landscaping such as traditional lawns provide an effective means of accomplishing pollutant removal. And, science has been cited which established that attempts to encourage large woody and leafy debris produce both safety and pollution problems.

To fulfill a water quality goal, the City and a majority of voters must commit to a comprehensive storm water management system. Even recent code provisions to comply with NPDES (National Pollutant Discharge Elimination System) standards simply don't do so. Thus, isolated **shoreline property owners should not be burdened with extraordinary and unreasonable attempts to solve municipal water quality issues**<sup>2</sup>.

### **Alternatives Not Presented**

The original CAO 50 foot (25' buffer + 25' setback) was not justified based on balanced, peer reviewed, locally applicable science. Essentially, the same combination, totaling 50 feet, has been reintroduced, without consideration of the fact that the current SMP was established with a 25 foot setback and that our shorelines have been developed in an acceptable fashion with that setback. **Insufficient justification has been presented to vary from the existing 25 feet**<sup>3</sup>.

Reasons to stay with the 25 foot setback include:

- a greater setback will force new dwellings into a tunnel-like setting with earlier development closer to the lakes shores<sup>4</sup>,
- use 50 feet would penalize undeveloped parcels, many of which are as shallow as 100 ft, leaving little room to develop,
- the larger the setback, the more new development would be forced into disturbance of hillsides, and
- to put it simply, consistency of regulations (between codes provisions and over time) will reduce issues induced by change.

---

<sup>1</sup> You will find prior submittals from WSSA on the Resource CD distributed at tonight's meeting.

<sup>2</sup> WSSA again points out to the Planning Commission issues regarding the infinitesimal impacts that shoreline properties contribute of the discharges of sediment and pollution into our lakes compared to the balance of properties in the basin and other non-point sources. To judicially apply the SMA, knowledge of the effectiveness of any proposed program is essential.

<sup>3</sup> WSSA is providing you video footage of staff's presentation on June 9<sup>th</sup>. You will note the arbitrary adjustment made to the vegetation management area of one shoreline property owner. This demonstrates the lack of sound basis for and inconsistencies when imposing vegetation requirements.

<sup>4</sup> This is commonly corrected by provision of a string-line rule, but it would be more efficient to merely remain at 25 feet.

## **60-40% Versus 40-60%**

Staff has noted that only a portion (60%) of the shoreland (to a depth of 25 feet) need be dedicated to vegetation; that 40% can be used for access to and activities along the shoreline. No justification was provided. It would be a simple matter to recommend a 40-60 proportion in response but that would be as illogical.

WSSA first recommends that such **vegetated areas are only needed for shoreline properties to manage their surface/storm waters** consistent with regulations all property owners must face AND also that **traditional lawns provide appropriate vegetation.**

Second, where some degradation of shoreline function would occur from a proposed action, the area dedicated to such restriction should include the area necessary for surface water management, nothing more.

Should the Commission see the need for a restricted, vegetated area, **WSSA recommends that it be restrained to less than 40%** so that access to the shore can be provided at the center of the parcel as many landscape designs would propose.

## **Related Issues of Concern**

A broader consideration for the Commission – If an applicant agrees to place a greater level of vegetated area than is ultimately required by your code, thus improving more ecological function than necessary, how will that be accounted in the City's cumulative impacts scheme?

To close, we have heard repeatedly that the 200 foot overlay district, described in the SMA, limits the breath of your consideration and that of staff and consultants. Yet we are also told that cumulative impacts, over time, must be considered. Surely we're all intelligent enough to understand that attempting to regulate specific properties for the broader impacts of other properties in the basin is fraught with potential legal challenge. Perhaps it is time for a serious discussion of property rights.

## **Summary**

We really feel much of the time like staff is speaking a different language. We are trying very hard to understand where staff is coming from but, despite our attempts and that of the Commission, we still are not getting the answers to the most basic questions. And yet, the process seems to be moving forward toward highly complicated and restrictive regulations, not only in regard to setbacks but all issues.

We look forward to seeing a complete draft of the SMP in December where we have many weeks to discuss the issues with our neighbors and consultants, and put together further recommendations. Since our comments are preliminary to preliminary code language, we ask you to provide only preliminary feedback to staff.

**Martin Nizlek, PhD (on behalf of WSSA)**  
**312 W Lake Samm. Pkwy NE**